



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

Case No.: 470-2013-03538

██████████,
Complainant,

v.

SUGAR CREEK GROUP, LLC, d/b/a SUGAR CREEK NURSING AND REHABILITATION,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On September 26, 2013, ██████████ (“Complainant”) filed a Complaint with the Commission against Sugar Creek Group, LLC, d/b/a Sugar Creek Nursing and Rehabilitation (“Respondent”) alleging discrimination on the basis of race and disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) ██████████

██████████ Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

There are two issues presented to the Commission. The first issue presented to the Commission is whether Complainant was subjected to a hostile work environment because of her race and/or disability. In order to prevail, Complainant must show that: (1) she experienced unwelcome offensive comments or actions in the workplace related to her race and/or disability; (2) the comments were severe or pervasive; (3) she made it known that the comments/actions were unwelcome; and (4) Respondent failed to take corrective action to address the hostile work environment.

Simply stated, there is insufficient evidence to substantiate Complainant’s allegations regarding a hostile work environment. By way of background, Complainant was hired as a Certified Nurse



Aide (“CNA”) on or about May 29, 2013. At all times relevant to the Complaint, Respondent maintained an employment handbook that enumerated various policies including those addressing discrimination. Complainant signed an acknowledgment of the employee handbook on or about May 29, 2013. During the course of her employment, Complainant alleges she was subjected to negative comments about her weight, patients’ weights, and African-Americans and that Respondent failed to act.

Despite Complainant’s assertions, she has failed to provide sufficient evidence to substantiate her claims. To the extent Complainant alleges her weight constitutes a disability as defined under the law, there is insufficient evidence to support this claim as Complainant admits her weight does not impair her major life activities. Moreover, assuming *arguendo* that Respondent made isolated comments regarding her weight, residents’ weights, or African-Americans, such comments are insufficiently severe or pervasive as to create a hostile work environment. Thus, based upon the aforementioned, there is no probable cause to believe that Respondent violated the civil rights laws as alleged.

The second issue presented to the Commission is whether Complainant was subjected to disparate discipline because of her race and/or disability. In order to prevail, Complainant must show that 1) she engaged in prohibited conduct similar to that of another co-worker of another race or without disabilities and 2) the disciplinary measures enforced against her were more severe than those levied against the co-worker of another race or without disabilities.

There is insufficient evidence that Complainant’s weight constitutes a disability as the term is defined under the law as Complainant admits it does not affect one or more of her major life activities. However, it is evident that Complainant, African-American, engaged in prohibited conduct similar to that of a similarly-situated Caucasian employee and that Respondent terminated Complainant while it merely issued a written reprimand to the Caucasian employee.

Again, by way of background, Respondent maintains an employee handbook that enumerates numerous policies including those prohibiting patient abuse and neglect. Specifically, the aforementioned policy prohibits abusive behavior and provides that such behavior can result in disciplinary action up to and including termination. Moreover, Respondent maintained a progressive disciplinary policy involving the use of verbal warnings, written warnings, probation, suspension, and/or termination; however, the policy provided that the discipline levied depended on the severity or frequency of the offense and that Respondent maintained the discretion to skip steps. Complainant was aware of this policy and signed an acknowledgment of such on or about May 29, 2013.

During the course of Complainant’s employment, she received several correction actions including a written warning on or about June 17, 2013 after a resident complained that she was injured during a transfer performed by Complainant, another written warning on or about August 6, 2013 for failing to complete documentation by the end of a shift, and a corrective action on or about August 21, 2013 for multiple call-ins during the course of her employment.

On or about September 18, 2013, a resident's family member reported to Respondent that Complainant injured the resident's shoulder while bathing her. Pursuant to policy and procedure, Respondent investigated the matter and suspended Complainant from September 18, 2013 through September 20, 2013, pending the outcome of the investigation. Ultimately, Respondent terminated Complainant on or about September 20, 2013 for resident abuse and violation of resident's rights.

Despite Respondent's assertions, evidence reveals that a similarly-situated Caucasian CNA named Heidi (Hauser) Shouse was treated more favorably under similar circumstances. Specifically, Shouse received a written warning on or about November 21, 2011 for failing to lock a patient's bed, resulting in the patient falling between the wall and the bed. Later, on or about April 18, 2012, the same CNA received another written warning for refusing to assist a patient that was located elsewhere. Lastly, on or about August 20, 2012, the Caucasian CNA was issued another verbal warning after the Director of Nursing received a complaint from a resident's family member asserting that the CNA was "short and rude" while assisting the resident and appeared to be annoyed by providing care. Yet, no evidence has been submitted or uncovered by Respondent to show that the Caucasian CNA was suspended pending an investigation or terminated for violating Respondent's policies in procedures. Simply stated, there is sufficient evidence to show that the Caucasian CNA was treated more favorably under similar circumstances; as such, Respondent's rationale for terminating Complainant is unworthy of credence and appears to be pretext for unlawful discrimination on the basis of race. Thus, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance on the basis of race.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

July 15, 2014
Date

Akia A. Haynes
Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission